

COPY

FILED
CHARLOTTE, N. C.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA

SEP 22 2000

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM J. ROPER, SR.,
NANCY ROPER,
WILLIAM J. ROPER, JR.,
DEBORAH ROPER,
ROPER SHOPPING CENTER AT
510 WOODLAWN ROAD, AS DESCRIBED
IN DEED BOOK 2854, PAGE 602

Defendants. ,

U. S. DISTRICT COURT
W. DIST. OF N. C.

Civil Action No. 3:00cv472-MCK

Complaint

The United States of America, by its undersigned attorneys,
by the authority of the Attorney General of the United States,
and at the request of the Administrator of the United States
Environmental Protection Agency ("EPA"), alleges that:

Nature of the Action

1. This is a civil action brought under Section 107(a)(1)
and (2) and of the Comprehensive Environmental Response,
Compensation, and Liability Act of 1980 ("CERCLA"), as amended,
42 U.S.C. § 9607(a)(1) and (2), for recovery of response costs
incurred by the United States in response to the release or
threat of release of hazardous substances into the environment at

or from the North Belmont PCE Site ("the Site") located at the Roper Shopping Center, Belmont, Gaston County, North Carolina.

2. In addition, this action seeks enforcement, in rem, of the U.S. Environmental Protection Agency's ("EPA") lien against the land known as Roper Shopping Center, pursuant to Section 107(1) of CERCLA, 42 U.S.C. § 9607(1). The United States has perfected a Superfund lien against this property and is seeking to sell that land, proceeds from any sale to be paid to the United States for all response costs for which Defendants are jointly and severally liable under CERCLA.

3. The United States also seeks injunctive relief and the imposition of civil penalties against defendants under Section 104(e)(5)(B)(ii) and (e)(2) of CERCLA, as amended, 42 U.S.C. § 9604(e)(5)(B)(ii) and (e)(2), for failure to comply with EPA's Section 104(e) information requests.

Jurisdiction and Venue

4. This Court has jurisdiction over the subject matter of this action and Defendants pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and 42 U.S.C. §§ 9607(a) and 9613(b). This Court has jurisdiction over the property that is the subject of the in rem action pursuant to Section 107(1)(4) of CERCLA, 42 U.S.C. § 9607(1)(4), 28 U.S.C. § 1655, and Federal Rules of Civil Procedure 4(n).

5. Venue is proper in this district pursuant to Sections 107(1)(4) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(1)(4) and 9613(b), and pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1395, because the release or threat of release of hazardous substances occurred in this judicial district and because the Site is located in this district.

Defendants

6. Defendant William J. Roper, Sr., is an individual who currently resides at 904 S. Main Street, Mount Holly, NC. He is named in this complaint as an owner of the Site at the time of the disposal of hazardous substances at the Site.

7. Defendant Nancy Roper is an individual who currently resides at 904 S. Main Street, Mount Holly, NC. She is named in this complaint as an owner of the Site at the time of the disposal of hazardous substances at the Site.

8. Defendant William J. Roper, Jr., is an individual who currently resides at 106 Jones Street, Belmont, NC. He is named in this complaint as a current owner of the Site. During the course of EPA's removal activities at the Site, Mr. Roper, Jr., acquired title to the property from his parents, William J. Roper, Sr., and Nancy Roper.

9. Defendant Deborah Roper is an individual who currently resides at 106 Jones Street, Belmont, NC. She is named in this complaint as a current owner of the Site. During the course of

EPA's removal activities at the Site, Deborah Roper acquired title to the property from her in-laws, William J. Roper, Sr., and Nancy Roper.

10. Defendant tract or parcel of land known as Roper Shopping Center, addressed at 510 Woodlawn Road, Belmont, North Carolina, is the subject of this in rem action, and is described more particularly in Attachment A.

General Allegations

The Site

11. The North Belmont PCE Site is a 160-acre site located in Belmont, Gaston County, North Carolina, approximately 35 miles west of Charlotte, NC. Belmont is primarily a textile manufacturing community of approximately 8,434 people.

12. The Site consists of two source areas identified below. In addition to other properties on the Site, 25 residential and two commercial properties, a church and an elementary school were initially found to have drinking water wells contaminated with perchloroethylene ("PCE") as high as 15,000 micrograms per liter ("ug/l") (the removal action level for PCE is 70 ug/l), trichloroethylene ("TCE") as high as 194 ug/l, and 1,2-dichloroethylene ("DCE") as high as 664 ug/l. Each is a volatile organic compound ("VOC") consistent with dry cleaning activities, and a hazardous substance within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

13. The main source of contamination is referred to as "Source A", and is located at the Roper Shopping Center in Belmont.

14. From approximately 1962 to 1975, Mr. and Mrs. Roper, Sr., leased a portion of the Roper Shopping Center to Untz Dry Cleaners, a family operated dry cleaning facility. Mr. Untz and his employees disposed of the spent dry cleaning solvents by dumping them on the ground or into the septic system, thereby contaminating the shopping center groundwater as well as the groundwater of neighboring properties. Source A is surrounded to the east and west by private residences and to the south by North Belmont Elementary School.

15. The secondary source of contamination is referred to as "Source B", and is located 1,500 feet downhill from Source A.

16. From approximately 1958 until 1962, Untz Dry Cleaners operated another dry cleaning facility at Source B. Mr. Untz disposed of the spent dry cleaning chemicals at this location by dumping them directly onto the ground, just as he did at Source A.

17. Untz Dry Cleaners' activities on the Site resulted in the spilling, leaking or other release or threatened release of chemicals in the groundwater and drinking water wells in the area, including chemicals that constitute or contain hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4.

Investigative Activities at the Site

18. The Site was initially investigated by the Gaston County Health Department in February, 1991, to evaluate community water supplies for VOCs. The County obtained water samples from the well that provided water to the North Belmont Elementary School and to two single family dwellings. Results indicated significant VOC contamination (PCE, TCE and 1,2 DCE), prompting the Department to contact EPA for assistance with the Site.

19. On February 29, 1991, EPA Region IV's Emergency Response and Removal Branch ("ERRB") began collecting and analyzing approximately 25 drinking water samples from wells in the area. PCE, TCE and DCE were detected in 15 of the samples, with PCE concentrations ranging as high as 15,000 ug/l.

20. The Agency for Toxic Substances and Disease Registry ("ATSDR") agreed with the State of North Carolina that such high concentrations posed a threat to human health through both ingestion and inhalation, concluding that an alternate source of all household water, not just bottled water for cooking and drinking, was needed.

21. EPA immediately set up temporary water tanks for the residences' household water supply systems, and supplied the residents and school with bottled drinking water while it built a pipeline to connect them to the public water system.

22. In all, 29 of the neighborhood drinking water wells were taken out of service, with 12 wells remaining intact as monitoring wells.

23. From February to October, 1991, six monitoring wells were installed on the Site and a hydrological investigation was launched. While no VOCs were found in Source A's soil samples, there was surface soil contamination at the North Belmont Elementary School and in the area behind the Roper Shopping Center where the boiler for the dry cleaner was kept.

24. The State of North Carolina Department of Environment, Health and Natural Resources ("NCDEHNR") completed their Preliminary Assessment and Site Investigation ("PA/SI") in July, 1993, recommending that further action be taken under CERCLA.

25. On August 7, 1995, EPA began its Remedial Investigation and Feasibility Study ("RI/FS"), conducted simultaneously with additional removal activities at the Site. During the RI/FS, four locations were investigated as potential sources of contamination, but only Sources A and B were identified as actual sources of contamination.

26. By April of 1996, construction of a one-mile water line extension was completed, connecting 29 residences with the City of Belmont's public water system. Another 63 residences are scheduled to be added in 2000.

27. From March through September, 1996, 44 residential wells at the Site were sampled to determine whether the water

quality of drinking water exceeded Federal Maximum Contaminant Levels ("MCLs"). Results indicated that the groundwater still contained high levels of VOCs, namely, PCE, TCE, DCE, chloroform, methylene chloride, 1,1-dichloroethane and lead.

28. EPA completed its RI/FS on September 24, 1997, and issued its final Record of Decision ("ROD"). The remedy selected was groundwater exposure abatement along with groundwater treatment. Both the groundwater treatment and remediation are expected to take approximately ten years. Monitoring of the Site is expected to continue for approximately 15 years.

29. On July 22, 1999, the Site ranked on the National Priority List ("NPL"), EPA's list of the nation's most serious, uncontrolled or abandoned hazardous waste sites identified for possible long-term Superfund remediation. Remedial action at the Site is expected to begin this fall.

Costs Incurred by the United States

30. As of January, 2000, EPA has incurred response costs at the Site in excess of \$1.7 million. The estimated future cost of the remedy selected by EPA is approximately \$4.7 million, bringing EPA's projected total costs for the Site to approximately \$7 million.

FIRST CLAIM FOR RELIEF

**Defendants are Liable
for the United States' Response Costs
at the North Belmont PCE Superfund Site**

31. The United States realleges paragraphs 1 through 30 as if they were fully set out below.

32. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section--

- (1) the owner and operator of a vessel or a facility,
 - (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for-

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan.

33. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

34. The VOCs listed in Paragraph 10 and other contaminants listed in Paragraph 25, above, are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

35. Hazardous substances were released or posed a threat of release into the environment at the Site within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

36. Defendants William J. Roper, Sr., and Nancy Roper each is jointly and severally liable as an owner of the Site at the time of disposal, pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a).

37. Defendants William J. Roper, Jr., and Deborah Roper each is jointly and severally liable as a current owner of the Site within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a).

38. William J. Roper, Sr., Nancy Roper, William J. Roper, Jr., and Deborah Roper are all "persons" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

39. The actions taken by the United States in connection with the Site constitute "response actions" as defined in Sections 101(24) and (25), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(24) and (25), and 9607(a). The United States has incurred over \$1.7 million in response costs to date.

40. The costs incurred by the United States were for actions taken in response to the release or threatened release of hazardous substances at the Site not inconsistent with the National Contingency Plan ("NCP"), which was promulgated pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300.

41. The United States has satisfied any and all conditions precedent to a response action and to recovery of its response costs under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

42. Defendants are jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all costs incurred by the United States for response actions at the Site.

SECOND CLAIM FOR RELIEF

**The United States Superfund Lien
against Defendants' Property should be Enforced**

43. The United States realleges paragraphs 1 through 30 as if they were fully set out below.

44. Section 107(1) of CERCLA, 42 U.S.C. § 9607(1), provides in pertinent part:

(1) All costs and damages for which a person is liable to the United States under subsection (a) of this section...shall constitute a lien in favor of the United States upon all real property and rights to such property which-

- (A) belong to such person; and
- (B) are subject to or affected by a removal or remedial action.

(2) The lien imposed by this subsection shall arise at the later of the following:

- (A) The time costs are first incurred by the United States with respect to a response action under this chapter.
- (B) The time that the person referred to in paragraph (1) is provided (by certified or registered mail) written notice of potential liability.

Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 9613 of this title.

- (4) The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred.

45. All Defendants are persons jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all response costs incurred by the United States in connection with the North Belmont PCE Site, including enforcement costs and prejudgment interest on such costs. Pursuant to Section 107(1) of CERCLA, 42 U.S.C. § 9607(1), the costs incurred by the United States in connection with the Site constitute a lien upon the real property constituting the Site.

46. Pursuant to Section 107(1)(2) of CERCLA, 42 U.S.C. § 9607(1)(2), William J. Roper, Sr., Nancy Roper, William J. Roper, Jr., and Deborah Roper were provided with written notice of potential liability on or about January 21, 2000, informing them that they are PRPs under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

47. On March 8, 2000, the United States perfected a Superfund lien against the Roper Shopping Center property. Pursuant to Section 107(1)(2), 42 U.S.C. § 9607(1)(2), the lien upon the Site will continue until liability for the United States' unreimbursed response costs incurred in connection with the Site are satisfied.

48. Pursuant to Section 107(1)(4) of CERCLA, 42 U.S.C.

§ 9607(1)(4), the costs constituting the lien may be recovered in an action in rem in the United States District Court for the District in which the removal or remedial action has occurred.

THIRD CLAIM FOR RELIEF

The United States is entitled to collect civil penalties against Defendants for their failure to comply with EPA's 104(e) Information Requests

49. The United States realleges paragraphs 1 through 30 as if they were fully set out below.

50. Sections 104(e)(2) and 104(e)(5)(B)(ii) of CERCLA, 42 U.S.C. §§ 9604 (e)(2) and 9604(e)(5)(B)(ii), state in pertinent part:

(e)(2) Any officer, employee, or representative described in paragraph (1) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

- (A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a ...facility or transported to a...facility.
- (B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at...a facility.
- (C) Information relating to the ability of a person to pay for or to perform a cleanup.

.....

(e)(5)(B)(ii) The President may ask the Attorney General to commence a civil action to compel compliance with a request or order referred to in subparagraph (A). Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminants, the court shall take the following actions:

(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents....

The court may assess a civil penalty not to exceed \$25,000 for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraph (2), (3), or (4) or an order issued pursuant to subparagraph (A) of this paragraph.

51. Section 104(e)(5)(B) of CERCLA, 42 U.S.C. § 9604(e)(5)(B), authorizes the Court to compel compliance with EPA requests for information pursuant to Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2), and to assess a civil penalty not to exceed \$25,000 for each day of noncompliance with EPA's requests against any person who unreasonably fails to provide the information requested. Under the Debt Collection Improvement Act of 1996, however, agencies were given the authority to increase penalties in civil penalty actions. The Act was implemented by EPA's Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R., Part 19, effective January 30, 1997, raising the ceiling on civil penalties under CERCLA to \$27,500 for each day of noncompliance.

52. A duly designated representative of EPA sent 104(e) Information Requests and Notice of Liability letters to Defendants on January 21, 2000. Defendants were given 30 days to respond. The Information Requests sought information in connection with EPA's enforcement efforts at the Site and recovery of its response costs pursuant to Section 107 of CERCLA,

42 U.S.C. § 9607, and included requests for information on Defendants' ability to pay, as per Section 104(e)(2)(C) of CERCLA, 42 U.S.C. § 9604(e)(2)(C).

53. Having received no response from any Defendant by February 28, 2000, EPA called Mr. and Mrs. Roper, Sr., and Mr. and Mrs. Roper, Jr. During a telephone conversation with William Roper, Jr., he stated that he would "try" to respond. At this time, however, none of the Defendants has responded, making their 104(e) responses over 200 days late, with no explanation provided for the delay.

54. All Defendants are "persons" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

55. All Defendants have or may have information relating to the matters set forth in Section 104(e)(2)(A), (B), or (C) of CERCLA, 42 U.S.C. 9604(e)(2)(A), (B), or (C).

56. North Belmont PCE Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

57. At the time EPA issued the Information Requests to Defendants, EPA had a reasonable basis to believe that there had been a release or threat of release of a hazardous substance or pollutant or contaminant at the North Belmont PCE Site within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

58. All Defendants had reasonable notice of their last day to respond to the Information Requests. In fact, EPA sent reminder requests to Defendants on April 14, 2000, informing them

that their responses to the 104(e) Information Requests were late, that the penalty for noncompliance could be as high as \$27,500 per day, that if EPA did not hear from Defendants within five days of receipt of that letter, a civil judicial action could be initiated against them. No responses were received from any of the Defendants.

59. All Defendants unreasonably failed to comply with EPA's Information Requests pursuant to Section 104(e)(2) of CERCLA.

60. All Defendants violated Section 104(e) of CERCLA by unreasonably failing to provide the information requested on or before February 20, 2000.

61. The United States reserves the right to amend this complaint or to file a separate action, as authorized by Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), against Defendants or any other potentially responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover further response costs incurred, or to be incurred, at the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, United States of America, requests this Court to grant the following relief:

1. Award the United States a judgment against Defendants William J. Roper, Sr., Nancy Roper, William J. Roper, Jr., and Deborah Roper for all costs incurred by the United States in response to the release or threat of release of hazardous

substances at the North Belmont PCE Superfund Site, which costs are in excess of \$1.7 million;

2. Pursuant to Sections 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201, enter a declaratory judgment that Defendants are liable for all future response costs that may be incurred by the United States in connection with the Site;

3. Order the real property and rights covered by the lien to be sold and the proceeds from any sale to be paid to the United States for all response costs for which Defendants are jointly and severally liable under CERCLA;

4. Order Defendants, pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), to comply fully with EPA's Information Requests;

5. Award the United States, pursuant to Section 104(e)(5)(B)(ii) of CERCLA, 42 U.S.C. § 9604(e)(5)(B)(ii), civil penalties in an amount up to \$27,500 for each day from February 20, 2000, until Defendants fully comply with the Information Requests;

6. Award the United States the costs of this action, including its costs of attorney time; and

7. Grant such other relief as the Court deems appropriate.

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EXHIBIT A

9PG305

BK2854PG602

EXHIBIT A

TRACT I: BEING THE FULL CONTENTS of Lots. 1 and 6 as shown on that map of the S.L. Roper Estate, North Belmont, North Carolina as recorded in the Office of the Register of Deeds of Gaston County, North Carolina in Plat Book 12 at Page 103 to which reference is hereby made for a more full and complete description by metes and bounds.

Being the full contents of that property described in that deed recorded in Book 896 at Page 87 of the Gaston County Public Registry and also as described in the second tract of that deed recorded in Book 778 at Page 721 of the Gaston County Public Registry.

TRACT II: BEGINNING at an old iron stake in the Easterly edge of Woodlawn Road, the Southwesterly corner of the S.L. and Sallie Roper property, and Northwest corner of property of Henry Roper, and runs thence from the point of the Beginning, with Henry Roper's line, North 65-20 East, 445.4 feet to an old iron stake; thence North 11-05 West, 41.15 feet to an iron stake; thence South 65-20 West 458.36 feet to an iron stake in the Easterly edge of Woodlawn Road; thence with the Easterly edge of Woodlawn Road, South 29-23 East, 4014 feet to the point of the Beginning, as shown and described from an unrecorded plat made of S.L. Roper Property by F.C. Rankin, R.S., June 10, 1957.

Being the identical property described as the third tract on that deed recorded in Book 778 at Page 721 of the Gaston County Public Registry.

Filed for registration on
 9th day of March A.D.,
~~18~~ 2000 at 9:16 O'clock
A.M., and Registered in the
 office of Register of Deeds,
 Gaston County, N.C.
 in Book 3059 Page 303

03/09/00 9:16AM 000000#4953
 **17 Cheryl

DEED	\$10.00
***TOTAL	\$10.00
CHECK	\$10.00
CHANGE	\$0.00

Alvin B. Brown
 Register of Deeds

By

Clair W. Brown
 Assistant
 Deputy